



**The Commonwealth of Massachusetts**

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**DEPARTMENT OF  
TELECOMMUNICATIONS AND ENERGY**

D.T.E. 05-40

October 31, 2005

Petition of KeySpan Energy Delivery New England for Approval of Firm Transportation and Related Agreements with TransCanada Pipelines Limited and Union Gas Limited.

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FOR: KEYSpan ENERGY DELIVERY NEW ENGLAND  
Petitioner

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Intervenor

I. INTRODUCTION

On May 23, 2005, pursuant to G.L. c. 164, § 94A, Boston Gas Company (“Boston Gas”), Colonial Gas Company (“Colonial Gas”), and Essex Gas Company (“Essex Gas”) each doing business as KeySpan Energy Delivery New England (“KeySpan or the “Company”) filed with the Department of Telecommunications and Energy (“Department”) a petition for approval of firm transportation and related agreements with Union Gas Limited (“Union”)<sup>1</sup> and TransCanada Pipelines Limited (“TransCanada”).<sup>2</sup>

Pursuant to notice duly issued, the Department held a public hearing on July 6, 2005. The Attorney General of the Commonwealth (“Attorney General”) intervened under authority of G.L. c. 12, § 11 E. The Department held a technical session on July 6, 2005, and an evidentiary hearing on September 20, 2005. At the evidentiary hearing, the Company presented the testimony of two witnesses: John E. Allocca, Director of Contracts in KeySpan’s Energy Transactions Division, and Theodore E. Poe, Jr., KeySpan’s Manager of Energy Planning.

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<sup>1</sup> Union, a wholly-owned subsidiary of Duke Energy Company, owns and operates a gas transmission system in southwestern Ontario, Canada, through which it offers gas transportation services (Exhs. JEA-1, at 1; AG-1-5).

<sup>2</sup> TransCanada owns and operates a natural gas pipeline system extending from the border of the Provinces of Alberta and Saskatchewan into the Province of Quebec, with branch pipelines extending to various points on the Canadian-United States border (Exh. JEA-7).

The evidentiary record consists of 67 exhibits. The Company and the Attorney General filed initial briefs on September 30, 2005. The Company filed a reply brief on October 7, 2005. The Attorney General did not file a reply brief.

## II. DESCRIPTION OF KEYSpan'S PROPOSAL

KeySpan is seeking Department approval of firm transportation and related agreements with Union and TransCanada (collectively, the "Agreements") (Exhs. KEDNE-1; JEA-1 through JEA-15). Under these Agreements, KeySpan will have the right to transport up to 16,794 dekatherms ("Dth") per day of gas from Dawn, Ontario, Canada. The gas will be transported by Union from Dawn, Ontario, Canada, to an interconnection with TransCanada known as Parkway<sup>3</sup>, and then would be transported by TransCanada from Parkway to Waddington, New York (Exh. KEDNE-1, at 5-6). The Agreements provide each of the KeySpan gas distribution companies with the right to transport a portion of the 16,794 Dth/day of gas, with Boston Gas receiving rights to 8,701 Dth/day, Colonial Gas receiving rights to 6,070 Dth/day, and Essex Gas receiving rights to 2,023 Dth/day (id.).

The transportation service is expected to commence on November 1, 2006, upon expiration of the Company's current supply agreement with Alberta Northeast Gas Ltd. ("ANE") (id. at 6). KeySpan will enter into separate agreements for the purchase of gas at Dawn, Ontario, Canada, upon approval of the Agreements at issue in this matter (id.).<sup>4</sup>

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<sup>3</sup> Parkway is a compression station at the junction of the Union and TransCanada facilities and is located at Milton, Ontario, Canada (Exh. JEA-1, at Sch. A).

<sup>4</sup> Subject to approval in the current matter, KeySpan anticipates conducting a competitive (continued...)

A. The Union Contract

The Company entered into a firm transportation contract and a financial backstopping agreement (collectively, the “Union Agreements”) with Union for mainline capacity pursuant to Union’s rate schedule M12 for a term of eleven years commencing on November 1, 2006 (Exhs. JEA-1, at 8; JEA-1, at exh. Rate M12). In order for this project to take place, Union must construct (1) a 18.2 kilometer 48-inch pipeline and (2) a 17.1 kilometer 48-inch pipeline, both in Ontario, Canada (Exh. AG 1-17). In addition to the new pipelines, Union will also need to upgrade an existing compressor at Parkway and install additional compression at its Dawn compressor station (id.). KeySpan represents that Union received regulatory approval from the Ontario Energy Board (“OEB”) for these infrastructure improvements on July 6, 2005, and construction is expected to commence in Spring 2006 (id.). Union will own and operate these new facilities (id.).

Under the Union Agreement, KeySpan is exposed to financial liability pursuant to a financial backstopping agreement if the Company fails to satisfy or waive conditions for which it has some control (Exh. KEDNE-1, at 10). Specifically, KeySpan must: (1) enter into the necessary contracts with Union to facilitate the transportation services contemplated in the Union Agreements; and (2) receive all internal and external regulatory approvals for the Union Agreement (e.g., approval from the Department) (id.). KeySpan states that Union must begin pre-engineering and limited construction activity prior to receipt of final regulatory approval

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<sup>4</sup>(...continued)

solicitation in the Spring of 2006 and entering into gas supply arrangements prior to November 1, 2006 (Exh. DTE 1-7).

(id. at 9-10). Hence, the Union Agreements ensure that Union does not bear 100 percent of the risk associated with the financial responsibility for constructing a pipeline without a financial commitment from KeySpan (id. at 10; see also Exhs. JEA-1; JEA-2).

B. The TransCanada Agreement

KeySpan states that Boston Gas, Colonial Gas, and Essex Gas each entered into a precedent agreement, a financial assurances agreement, and a shared cost event of cancellation agreement (collectively, the “TransCanada Agreements”). Specifically, KeySpan will contract with TransCanada for mainline capacity under TransCanada’s firm transportation service toll schedule for a ten-year term commencing on or about November 1, 2006 (Exhs. JEA-7, at exh. A; JEA-10, at exh. A; JEA-13, at exh. A).

Similar to the Union infrastructure construction and improvements, TransCanada will likewise need to construct two pipelines in Ontario: (1) 18.1 kilometers of 42-inch pipeline and (2) 19.7 kilometers of 42-inch pipeline (Exh. AG 1-18). TransCanada filed the pipeline construction project with the Canadian National Energy Board on September 12, 2005, and construction is expected to commence in Spring 2006 (id.). TransCanada will construct, own, and operate these pipelines (id.).

Under the TransCanada Agreement (similar to the Union Agreement, noted above), KeySpan must make a financial commitment to TransCanada to ensure the Company’s financial commitment for the pipeline’s construction (Exhs. KEDNE-1, at 11-12; JEA-7; JEA-10; JEA-13). Therefore, should KeySpan seek to cancel its participation in the pipeline construction project (e.g., due to failure to obtain approval by the Department of the

Agreements), and thus trigger the event of cancellation agreements, KeySpan would be contractually responsible for a portion of the cost of pipeline construction (id.). The financial assurances agreements and the event of cancellation agreements ensure that TransCanada does not bear 100 percent of the risk associated with the financial responsibility for constructing a pipeline without a financial commitment from KeySpan (id.). However, TransCanada is also contractually obligated to minimize KeySpan's exposure to risk (Exhs. KEDNE-1, at 10-11; RR-AG-1; Tr. at 9-11).

### III. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of commodity resources as well as for the acquisition of capacity under G.L. c. 164, § 94A, the Department examines whether the acquisition of the resource is consistent with the public interest. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, a local distribution company ("LDC") must show that the acquisition (1) is consistent with the company's portfolio objectives, and (2) compares favorably to the range of alternative options reasonably available to the company at the time of the acquisition or contract renegotiation. Id.

In establishing that a resource is consistent with the company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved forecast and requirements plan or in a recent review of supply contracts under G.L. c. 164, § 94A, or may describe its objectives in the filing accompanying the proposed resource. Id. In comparing the

proposed resource acquisition to current market offerings, the Department examines relevant price and non-price attributes of each contract to ensure a contribution to the strength of the overall supply portfolio. Id. at 28. As part of the review of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage and commodity options that were available to the LDC at the time of the acquisition, as well as with those opportunities that were available to other LDCs in the region. Id. In addition, the Department determines whether the acquisition satisfies the LDC's non-price objectives including, but not limited to, flexibility of nominations and reliability and diversity of supplies. Id. at 29.

#### IV. POSITION OF THE PARTIES

##### A. KeySpan

KeySpan asserts that the Agreements are in the public interest, are consistent with the portfolio objectives set forth in its most recently-approved supply plan, and compare favorably to the range of alternatives reasonably available to the Company (KeySpan Brief at 7, 9, 11). KeySpan asserts that it is seeking approval of the Agreements to accomplish two primary objectives: (1) to replace expiring agreements that are needed to meet current and projected sendout requirements in a least-cost manner, and (2) to further diversify the Company's resource portfolio (id. at 4).

With respect to the Company's portfolio objectives, KeySpan notes that it updated its forecast of sendout requirements to extend beyond the currently-approved period using the same methodology previously approved by the Department in its most recent supply plan

(id. at 8, citing Exh. TEP-1, at 5; see also KeySpan Energy Delivery New England, D.T.E. 01-105 (2003)). KeySpan asserts that this updated forecast demonstrates that KeySpan has a need for incremental peak-day deliverability totaling 9,000 MMBtu/day beginning in 2005/2006 and increasing to 121,000 MMBtu/day by 2008/2009 (KeySpan Brief at 8-9; Exh. TEP-1, at 8.). KeySpan argues that the updated forecast also demonstrates a similar need for incremental peak-season deliverability (KeySpan Brief at 9). KeySpan argues that its analysis demonstrates that the ANE capacity needs to be renewed or replaced (KeySpan Brief at 9 citing Exh. TEP-1, at 8). Therefore, KeySpan asserts that, as the Department has previously determined that the Company's portfolio objectives and its resource acquisition process were appropriate and reasonable, and because those practices were followed in the instant petition, the first criterion of the Department's standard has been met (i.e., consistency with the Company's portfolio objectives) (KeySpan Brief at 7-9).

KeySpan also contends that these Agreements compare favorably to reasonably available alternatives. The Company states that it evaluated three alternatives: (1) continued purchase of gas supplies at Waddington, New York; (2) the purchase of gas in Western Canada coupled with the acquisition of longhaul transportation capacity ("Longhaul Option"); and (3) the purchase of gas at Dawn, Ontario, Canada coupled with the acquisition of shorthaul transportation capacity from Dawn, Ontario, Canada to Waddington, New York via pipeline to be constructed by Union and TransCanada (the "Shorthaul Option") (id. at 10). KeySpan specifically states that it only considered alternatives that involved sourcing from a point on the Canadian border (id. at 10 n.5). KeySpan explained that to do otherwise would be inconsistent



with its portfolio objective of maintaining a diverse portfolio of resources (id.). The Company also notes that it currently has capacity commitments in place to transport the gas from Waddington, New York to Boston, and would not want to leave those capacity entitlements stranded and be required to seek alternative paths because to do so would raise costs to customers (id.).

Under its analysis, KeySpan argues that the Shorthaul Option is most favorable based on price and non-price factors (KeySpan Brief at 10 citing Exh. KEDNE-1, at 7-9). Specifically, KeySpan asserts that the Shorthaul Option provides access to a liquid trading hub, reduced price volatility as compared to Waddington, New York, reduced demand charges compared to the Alberta supply basin in Western Canada, reduced total gas cost to customers, and access to underground storage fields and diverse supply sources (KeySpan Brief at 10-11 citing Exh. KEDNE-1, at 9).

Regarding the Attorney General's comments that the TransCanada Agreements expose KeySpan's customers to substantial financial liability, the Company responds that a specific chain of events would need to take place in order to trigger the maximum financial obligation to KeySpan (KeySpan Reply Brief at 4-5; see also Tr. at 10-11). Specifically, TransCanada would need to complete construction of the entire project without the appropriate regulatory approvals; then the complete construction would need to be deemed reasonable under the circumstances (KeySpan Reply Brief at 4-5). In addition, the project facilities would have to be unable to be used in another expansion project, and, finally, if the cancellation was caused by KeySpan, the parties must be unable to find a replacement shipper (id.). KeySpan further

asserts that TransCanada is legally obligated to mitigate cancellation expenses to the extent possible by taking steps to minimize costs, to use the facilities in another project and to seek a replacement shipper (KeySpan Reply Brief at 4; Exh. RR-AG-1; Tr. at 10-11). Finally, the Company also asserts that should KeySpan not pursue these Agreements, its customers would face the virtual certainty of higher gas prices (KeySpan Reply Brief at 3 citing Exh. AG-1-14).

B. The Attorney General

The Attorney General argues that the Company's Agreements with TransCanada subject KeySpan's customers to substantial financial exposure (Attorney General Brief at 2).<sup>5</sup> Moreover, the Attorney General argues that the Department has not approved similar capacity agreements in the past, and that the TransCanada Agreements should, therefore, be rejected (id. at 4). In the alternative, the Attorney General argues that, if the Department approves the TransCanada Agreements, the Department should not pass any financial losses through to customers, but make the shareholders bear the financial risk (id. at 5). Lastly, the Attorney General asserts his right to challenge the "prudence and usefulness" of the TransCanada Agreements should the Department approve the contracts (id., citing Consumers Organization for Fair Energy Equity v. D.P.U., 368 Mass. 599 (1975); Boston Gas Company, D.P.U. 93-60, at 24-25 (1993); Attorney General v. Department of Telecommunications and Energy, 438 Mass. 256, 264 n.13 (2002)).

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<sup>5</sup> KeySpan appropriately notes that the Attorney General does not address the Union Agreements possibly because Union has already received regulatory approval from the OEB (KeySpan Reply Brief at 4 citing Exh. AG-1-17).

## V. ANALYSIS AND FINDINGS

With respect to the Company's portfolio objectives, the Agreements contribute to meeting KeySpan's stated goal of developing a diversified and least-cost portfolio (KEDNE-1, at 8-10; TEP-1, at 7-9). For the reasons set out below, the Department finds that KeySpan's Agreements with Union and TransCanada are consistent with the portfolio objectives and the supply planning process established in the Company's most recent Forecast and Supply Plan approved by the Department in KeySpan Energy Delivery New England, D.T.E. 01-105 (2003). KeySpan's analysis of replacement capacity shows that it requires more flexible resources such as provided in the Agreements to ensure system reliability, diversity of supply, and ultimately, cost savings for customers (Exhs. KEDNE-1, at 8-9; TEP-1, at 3, 8; Tr. at 18-23). The Agreements give KeySpan access to the Dawn trading hub, which, in turn, provides access to diverse supplies from Western Canada, the Rockies, the Mid-Continent, and the Gulf (Exh. KEDNE-1, at 9; Tr. at 21). The evidence further establishes that the Agreements are superior to the Company's reasonably available alternatives. The Company has demonstrated that the first alternative, i.e., purchasing at Waddington, is less preferable because Waddington is vulnerable to sharp price volatility (Exh. KEDNE-1, at 6-7; Tr. at 18, 32). The Company has also shown that the Agreements compare favorably to the Longhaul Option. Specifically, the Longhaul Option as compared to the Shorthaul Option would require the Company to pay higher demand and fuel charges (Exh. KEDNE-1, at 7, 8).<sup>6</sup>

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<sup>6</sup> Under the Longhaul Option, the demand charges are \$1.01/Dt and the fuel charge is 5 percent; under the Shorthaul Option, the demand charges are \$0.22/Dt and the fuel (continued...)

Hence, the Department finds that the Agreements are preferable to KeySpan's other alternatives and offer additional savings and reliability to the Company and its customers.

The Department also finds that the Agreements provide both price and non-price advantages compared to the alternative resource options available to the Company. As noted above, the Agreements provide access at Dawn to numerous pipelines, which ensures greater flexibility, diversity, and price stability. For the same reasons, the Department also finds that the Agreements will provide a cost-effective approach to managing required system resources.

The Attorney General argues that the Department should reject the TransCanada Agreements unless shareholders bear the financial risk (as opposed to ratepayers). The Attorney General bases his concern on the risk of financial exposure in the event of cancellation of the TransCanada project. However, the Company demonstrated that negotiated financial liability provisions are commonplace in contracts that require one party to commit capital resources as collateral in order for the other party to proceed with, as in this case, the construction of pipeline (Exhs. AG-1-12; AG-1-14; Tr. at 15-17). The Attorney General has not provided any evidence to establish that the financial liability provisions in the proposed Agreements are a deviation from standard practice in pipeline construction agreements (AG Brief at 4). In fact, the Department has approved contracts with similar provisions. See Bay State Gas Company, D.T.E. 03-37, exh. FCD-1 (2003); KeySpan Energy Delivery New England, D.T.E. 02-18, exhs. KEDNE-2, KEDNE-4 (2002). Moreover, in the event that the

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<sup>6</sup>(...continued)  
charge is 2 percent.

Agreements did result in financial liability for the Company, KeySpan would have to petition the Department, and only after our investigation and approval would KeySpan be permitted to recover such costs. In that instance, the Attorney General would be afforded the opportunity to “challenge the prudence and usefulness” of the Agreements. Hence, we reject, as premature and unsubstantiated, the Attorney General’s proposal to shift the financial liability risk to shareholders.

In conclusion, for the reasons stated above, the Department finds that KeySpan’s proposal to enter into long-terms contracts for firm transportation with Union and TransCanada to be in the public interest because the Agreements: (1) comply with the Company’s portfolio goals; (2) compare favorably to the range of alternatives reasonably available to the Company; (3) properly evaluate cost and non-cost attributes to ensure that its portfolio is strengthened; and (4) achieve flexibility of nominations, and reliability and diversity of supply. Therefore, the proposed Union and TransCanada Agreements are allowed.

VI. ORDER

After due notice, hearing, and consideration, it is

ORDERED: That the petition for approval of firm transportation agreements and related agreements with Union Gas Limited and TransCanada Pipelines Limited submitted by Boston Gas Company, Colonial Gas Company, and Essex Gas Company, all doing business as KeySpan Energy Delivery New England are ALLOWED.

By Order of the Department,

/s/  
Paul G. Afonso, Chairman

/s/  
James Connelly, Commissioner

/s/  
W. Robert Keating, Commissioner

/s/  
Judith F. Judson, Commissioner

/s/  
Brian Paul Golden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.